

107 FERC ¶ 61,223
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeene G. Kelly.

PJM Interconnection, L.L.C.

Docket No. ER04-742-000

ORDER CONDITIONALLY ACCEPTING JUNE ANNUAL ALLOCATION FOR
COMMONWEALTH EDISON ZONE

(Issued May 28, 2004)

1. On April 15, 2004, PJM Interconnection, L.L.C., (PJM) submitted the annual allocation of Financial Transmission Rights (FTRs) and Auction Revenue Rights (ARRs) for the zone of Commonwealth Edison Company (ComEd) for the period of June 1, 2004, to May 31, 2005. PJM requests that the Commission act on the filing before June 1, 2004, for the enclosed FTRs and ARRs to ensure that they are available to provide a hedge against congestion costs at the start of the next annual planning period on June 1, 2004.¹ The Commission in this order will not revise the FTRs and ARRs allocated for the June annual allocation. However, consistent with the May Allocation Order,² we will require additional mitigation measures for long-term firm point-to-point customers that received allocated FTRs less than their contractual rights. We are also instituting an investigation pursuant to section 206 of the Federal Power Act into the FTR and ARR allocation process. Our action benefits the public interest by implementing FTRs and ARRs and ensuring protections for customers in the annual allocation process in new areas of PJM.

¹ In lieu of PJM's annual reallocation FTRs, PJM has stated that network and firm point-to-point customers in the Commonwealth Edison zone will receive ARRs, in a quantity based on PJM's existing simultaneous feasibility measure. ARRs could then be converted (self-scheduled) into FTRs, at no cost, on a right of first refusal basis, or sold at auction to the highest bidder. ARRs are the mechanism by which the proceeds from the annual FTR auction are allocated.

² PJM Interconnection, L.L.C., 107 FERC ¶ 61,090 (April 29, 2004) (May Allocation Order).

I. Background

2. In a Director Letter order issued November 24, 2003, in Docket No. ER03-1409-000, the Commission accepted PJM's unprotested filing to establish a methodology for allocating FTRs in newly integrated areas subject to the outcome of Docket No. ER03-406-000 which concerned various matters related to FTRs.³ In later orders, however, the Commission found that prior to integrating new companies into PJM, PJM would have to make a filing to show whether the allocation methodology produced a reasonable allocation of FTRs.

3. In an order issued January 28, 2004 in Docket No. ER03-406-000,⁴ the Commission, responded to protests concerning the tariff provisions for allocating FTRs and ARR in the newly integrated areas such as the ComEd integration at issue here. The Commission found that it could not tell from the procedures in PJM's tariff whether ARRs and FTRs would be fairly allocated to customers from new areas, and therefore, required PJM to amend its tariff to provide that prior to making the initial allocation of FTRs and ARRs to customers in new areas, it would file its proposed allocation method so that customers could raise concerns with the allocation and the Commission could resolve those concerns prior to integration:

We find that under the procedures set forth in PJM's tariff, there is some uncertainty as to the exact level of ARRs that a customer in an area joining PJM will receive. To provide customers in new areas with an opportunity to raise any specific concerns with their ARR allocation before it is implemented, we will require PJM to make a further compliance filing with the Commission. Specifically, we will require PJM to amend section 5.2.2(e) of its tariff to state that PJM, prior to the initial allocation of FTRs in new regions, will make a filing with the Commission under section 205 of the Federal Power Act with the proposed allocation of ARRs.⁵

³ This filing was accepted subject to further Commission action in Docket No. ER03-406-000 et al.

⁴ 106 FERC ¶ 61,049 at P 23 (2004).

⁵ PJM Interconnection, LLC, 106 FERC ¶ 61,049 P 23 (2004). Subsequently in Docket No. ER04-653-000, the Commission reiterated this concern and required mitigation for the May allocation of FTRs when firm service customers did not receive a level of FTRs equivalent to their firm service. 107 FERC ¶ 61,090 at P 28-30 (2004).

4. The Commission imposed similar conditions in ruling on the filings dealing with the integration of ComEd into PJM. In Docket No. ER04-521-000, the Commission conditionally accepted PJM's filing to integrate ComEd's transmission system into PJM. But this filing was accepted subject to the condition that ComEd customers would receive FTRs equivalent to their firm service:

We share the concerns of the protesters that customers holding firm reservations should receive FTRs for a comparable level and term. If PJM is not able to award FTRs to all existing firm customers, it must justify why the resulting allocation is reasonable, and why other mitigating measures, such as suggested by Duke, should not be adopted. PJM should also either give existing transmission customers the opportunity to terminate their existing transactions by foregoing payment of access charges in return for not receiving FTRs, as Duke suggests here, or else explain why such a provision would not be just and reasonable.⁶

5. On April 29, 2004, in compliance with these orders, PJM submitted in Docket No. ER04-653-000 the initial allocation of FTRs in the ComEd zone for the month of May 2004, covering the period from the commencement of ComEd's integration to the end of the current PJM annual planning period. The Commission accepted the FTR allocations proposed by PJM for May, 2004, subject to PJM's adoption of a mitigation measure to ensure that customers are not harmed when they receive fewer FTRs than their contractual right to firm transmission service. In addition, the Commission reiterated its concern, expressed in the ComEd Integration Order, that customers holding firm reservations should receive FTRs for a comparable level and term in the PJM FTR allocation process.⁷ As a result, we determined that if PJM was unable to award FTRs to all existing firm customers, it must justify why the resulting allocation is reasonable, and why mitigating measures should not be adopted.

6. PJM's filing in this docket is designed to establish the initial yearly allocation of FTRs applicable to the customers in the newly integrated ComEd.

⁶ PJM Interconnection, LLC, 106 FERC ¶ 61,253 P 41 (2004):

⁷ PJM Interconnection, L.L.C., 106 FERC ¶ 61,253 at P 41 (March 18, 2004) (ComEd Integration Order).

II. Summary of Filing

A. First-Year Allocation of ARR and FTRs in the ComEd Zone

7. PJM states that the FTRs and ARRs were allocated in two stages. PJM explains that under PJM's approved Operating Agreement, the first-stage allocation is to all network integration transmission service loads in a transmission zone from the generating resources that are designated as historically serving network loads in such zone. PJM further explains that in the first-stage, load serving entities in the zone are assigned a pro rata share of the capability from such designated historic resources, based on the proportion of load such load serving entity serves in the zone. For purposes of the allocations in the ComEd zone, the reference year for designation of historic resources serving loads in the zone is "the year that the zone is integrated into the PJM interchange energy market," i.e., 2004. PJM states that the second-stage allocation is to firm point-to-point transmission paths and to other network service paths for which there was no designated historic resource.

8. PJM explains that the second stage is an iterative process in which 25 percent of the remaining system ARR capability is allocated in each of the four rounds, after the results are posted for each prior round. Valid ARR source points in stage 2 include zones, generators, hubs, and external interface points. Network service customers can request 25 percent of their remaining peak load (after taking account of the ARRs they received in stage 1) in each round. Firm point-to-point customers similarly may request in each round 25 percent of the MW on the source-sink path of their contracted service. . Once all results were posted, customers in the new zones were given until April 13 to advise PJM whether they wished their allocations to be in the form of ARRs or FTRs.

9. Additionally, PJM states that as required by its tariff, all outstanding FTRs must be simultaneously feasible. PJM notes that in accordance with section 5.2.2(f) of Schedule 1, where all FTR requests for the new zone were not feasible, they were "pro-rated and allocated in proportion to the MW level requested and in inverse proportion to the effect on the binding constraint." PJM states that this pro-rating was performed in the same fashion as illustrated by PJM in its April 2003 compliance filing in Docket No. ER03-406-002.

10. PJM asserts that only two ComEd-zone transmission customers elected to receive ARRs; all of the rest elected to receive FTRs. PJM states that 100 percent of all ComEd-zone FTRs requested in the first stage were awarded. Therefore, PJM contends that all loads in the ComEd zone are fully hedged for their requested access to the resources that historically have served that load. PJM states that in the second stage, 64.6 percent of all requested FTRs were awarded. PJM asserts that this is an aggregate average figure; more than half of the participants in the second-stage allocation received 100 percent of their requested FTRs, while some received less than the average.

11. PJM asserts that the greater degree of pro-rating for the second-stage requests resulted from multiple parties requesting the same sources (or sources that were fully requested in the first stage), because second stage requests were not limited to historic sources. Therefore, PJM states that many of the second stage requests sought FTRs over the same paths, with the result that the FTRs on highly sought paths that affected a binding transmission constraint were pro-rated among the firm network and point-to-point transmission customers that requested such paths.

12. PJM states that the following binding constraints affected the second stage allocations in the ComEd zone (there were no operative constraints in the first stage, as all requests were granted).⁸ PJM asserts that these constraints were determined by modeling the system flows that result from the source and sink paths and megawatts in the submitted FTR requests.

B. Reasonableness of Allocations

13. PJM states the enclosed allocations comply with PJM's approved Operating Agreement and were determined on a non-discriminatory basis using objective system modeling tools. PJM states that while some requests were pro-rated, that pro-rating was dictated by the capability of the transmission system, and by the rules the Commission has previously established for PJM's ARR allocations. PJM notes that there was somewhat less pro-rating in the annual allocation for the ComEd zone than there was in the allocation for the month of May, although the binding constraints were similar and affected similar services.

14. PJM states that a few of the ComEd zone customers whose May FTR requests were pro-rated raised issues with the reasonableness of those allocations in their protests in Docket No. ER04-653-000. Because similar issues arise with the annual allocation, PJM addresses each of their concerns here. PJM explains that within each round of the second stage of the allocations, firm-point-to-point paths and network service paths are treated in exactly the same way. PJM explains that when a constraint occurs, paths affecting that constraint are pro-rated based on the amount of FTRs in each request and its effect on the constraint, without regard to whether the path is for network or point-to-point service.

⁸ The operative constraints in the second stage of the allocation process were: (i) the East Frankfort to Goodings Grove 345 kV (11602) circuit; (ii) the Byron Cherry Valley 345 kV (0622) circuit; (iii) the Nelson to Electric 345 kV (15502) circuit; (iv) the normal limit on the East Frankfort to Goodings Grove 345 kV (11601) circuit; and (v) the Electric Junction to Lombard 345 kV (11124) circuit.

15. PJM acknowledges that its approved two-stage annual allocation process includes a preference for native load customers using resources that historically serve such loads. PJM asserts that such loads are allocated ARR equal to their pro rata share (based on the network customer's share of peak load) of the megawatt capability of such resources in the first-stage of the two-stage process. PJM explains that the two-stage annual allocation process resulted from a compromise in PJM's Market Implementation Committee designed to "give native load customers a priority in requesting ARRs from resources that historically served the load in the transmission zone," while at the same time providing ample flexibility for market participants through the second stage to pursue hedging strategies that meet their changing needs.

16. PJM states that one customer raised a concern in its protest in Docket No. ER04-653-000 that under PJM's procedures, FTRs and ARRs are made available in the annual allocation to customers taking long-term firm transmission service (i.e., service of one year or longer) before they are made available to customers that take service only on a monthly basis. PJM also states that its allocation process properly follows the principles of the Commission's pro forma tariff, which promote maximum utilization of the system by allowing long-term customers to displace monthly services. PJM states that the alternative of granting customers who bought only monthly service a higher priority over customers who have committed to long-term service would be contrary to the reasonable expectations of long-term customers, who properly should be able to rely on the higher priority afforded their long-term service by the pro forma tariff.

C. Mitigation Measures

17. PJM states that in accordance with the March 18 Order, it will grant existing transmission customers in the ComEd zone that were pro-rated in the annual allocation the opportunity to terminate their existing transactions by foregoing payment of access charges in return for not receiving FTRs, to the extent they did not receive FTRs.

18. Additionally, PJM asserts that under the Tariff, point-to-point customers that were pro-rated in the annual allocation can redirect their FTR requests to alternative resources for which FTRs are available. PJM states that some customers were pro-rated because they sought FTRs from the same sub-set of generators requested by many other market participants, which therefore became oversubscribed as FTR source points. PJM asserts that it has suggested to such customers that a possible solution would be for them to diversify their FTR sources through redirected point-to-point transmission service requests.

19. PJM states that as one of the pro-rated point-to-point customer's states in its protest to the May allocation, its point-to-point service is a "slice-of-system" service that states only one receipt point, but allows the customer to source power from multiple locations on ComEd's system. PJM states that it understands that there are a number of

such arrangements in the ComEd zone. PJM asserts that modeling such “slice of system” services for FTR purposes as required by the PJM Operating Agreement on the basis of the contractually specified source point (rather than from a composite point such as the Northern Illinois hub) contributed to the pro-rating of FTR requests in the second-stage allocation for the ComEd zone.

20. PJM points out that for customers with “slice of system” supply contracts the redirect option provides them the opportunity to receive FTRs from a composite point that may better reflect the underlying intent of their former ComEd service agreements. PJM states that recognizing that the market implementation is new to customers taking service in the ComEd zone, PJM has made every possible effort to inform customers to use this information to develop their own FTR hedging strategies. PJM asserts that it understands that several of the affected customers are actively pursuing this redirect option.

D. Effective Date

21. PJM requests an effective date of June 1, 2004 for the enclosed FTRs and ARR, to ensure that they are available to provide a hedge against congestion costs at the start of the next annual planning period on June 1, 2004. PJM states that effective on that date, market participants will schedule service with PJM based in part on the level of protection from congestion charges reflected by the allocated FTRs. PJM asserts that market participants would best be served by knowing that their allocations of FTRs have been accepted by the Commission before scheduling service, if the market is to operate efficiently.

III. Notice of Filing, Interventions and Protests

22. Notice of the filing was published in the Federal Register on April 26, 2004, with comments, protest, and interventions due on or before April 26, 2004.⁹

23. Timely motions to intervene were filed by the Borough of Chambersburg, Pennsylvania (Chambersburg), the Detroit Edison Company (Detroit Edison), Duke Energy North America, L.L.C. and Duke Energy Trading and Marketing, L.L.C. (Duke), the Madison Gas and Electric Company (MGE), Exelon Corporation (Exelon), MidAmerican Energy Company (MidAmerican), the Morgan Stanley Capital Group Inc. (Morgan Stanley), Wisconsin Electric Power Company (WEPC), and Wisconsin Public Power, Inc. (WPPI). Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

⁹ 69 Fed. Reg. 22, 498 (April 26, 2004).

24. Late interventions were filed by Alliant Energy Corporate Services, Inc. (Alliant), the Illinois Commerce Commission (ICC), the Illinois Municipal Electric Agency (IMEA), the Wisconsin Public Service Corporation (WPSC) and Consumers Energy Company (CECO). Pursuant to Rule 214, any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this state of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

IV. Responsive Pleadings

25. MGE, MidAmerican, WPPI, WEPC, WPSC and Alliant moved to intervene and protested the filing.

26. All parties that protest the filing (i.e., WPSC, Alliant, MGE, MidAmerican, WEPC and WPPI) argue that PJM's defense of its FTR allocation through citing PJM's approved allocation procedures in its Tariff and Operating Agreement is disingenuous. WEPC is concerned that in future allocations, the unduly discriminatory scheme set forth in the PJM Open Access Transmission Tariff (PJM Tariff) and Operating Agreement, may very well result in an allocation that is harmful to WEPC and the ratepayers that it serves and that the scheme is not in accord with the Commission's prior directives governing the integration of ComEd into PJM. Protestors emphasize that PJM has not justified the preference given to load serving entities with network integration service over long-term firm point-to-point customers. MGE believes that there is no basis for this preference, as firm point-to-point customers have reserved and paid for service, "of equivalent firmness to the network integration customers' service."¹⁰ MGE, WEPC and WPSC state that this preferential treatment also worsens the impact of seams between PJM and MISO because it exposes point-to-point customers to congestion costs for transactions across seams while protecting transactions within the PJM control area.

27. Alliant, WPSC, WEPC, WPPI and MGE argue that PJM load serving entities received a preference over non-PJM load serving entities in the June annual allocation process. WPSC contends that PJM accomplishes this discrimination by prohibiting non-PJM load serving entities with firm transmission rights from participating with PJM load serving entities in the first stage of the FTR allocation process. WPSC asserts that PJM load serving entities are limited only in that they are prohibited from requesting more FTRs from a specific generator (source point) than that generator can produce (e.g., the MW capability for the resource). WPSC contends that the economic losses of WPSC and other Wisconsin load serving entities in the annual allocation are a direct result of PJM's discriminatory process of preferentially allocating FTRs on ComEd's system to PJM's load serving entities that take long-term firm service to serve native load first, and then

¹⁰ MGE protest, p. 9

allocating the residual FTRs to non-PJM load serving entities who also serve native load customers. WPSC argues that PJM has discriminated against WPSC by denying it FTRs and other rights to which it is entitled merely because WPSC's native load is located in MISO instead of PJM. WPSC claims that if PJM had treated WPSC on the same basis as it treats its own load serving entities for FTR purposes, WPSC would have received substantially more of the FTRs it had requested. WPSC complains that although ComEd and WPSC both have equivalent long-term firm transmission service rights (e.g., service from Byron into ComEd's transmission system) and both serve native load customers, the FTR allocation that each company received were very different.

28. WPSC, WPPI, WEPC argue that they were significantly pro-rated in the second stage of the June annual allocation. WPSC contends that in the second stage, non-PJM load serving entities are permitted to request a share of the FTRs that are left. However, those PJM load serving entities that did not receive a full allocation of FTRs in the first stage get "a second bite at the apple" because they have the right to compete with non-PJM load serving entities for the remaining FTRs in the second stage.

29. MidAmerican states that PJM has refused to allow it to request FTRs for MidAmerican's monthly firm transmission service as part of PJM's initial FTR allocation.¹¹ MidAmerican argues that this has dramatically reduced the value of MidAmerican's transmission service and that PJM must be ordered to reallocate FTRs. MidAmerican states that there is no provision for holders of monthly firm reservations to acquire monthly FTRs. MidAmerican asserts that since monthly FTRs will only be allocated to the extent they are simultaneously feasible with annual FTRs, there is a good possibility that no monthly FTRs will be available. MidAmerican argues that none of PJM's previous compliance filings indicated that FTRs for monthly firm service would receive a lower priority than those for annual service.

30. MidAmerican states that PJM's defense of its FTR allocation through citing its pro forma Open Access Transmission Tariff ("OATT") is inadequate and misplaced. PJM argues that the OATT provides that, under certain conditions, requests for long-term service can take priority over existing short term reservations. MidAmerican states that this argument is irrelevant because these "bumping rights" exist prior to the commencement of service, while FTR allocation applies after the commencement of service. MidAmerican does not concede that once monthly service begins, it is subject to a lower class of firm service. MidAmerican also states that a bumped monthly customer does not continue to pay for service it does not receive.

¹¹ MidAmerican notes that beginning in late 2002, it secured certain monthly firm transmission service reservations from Commonwealth Edison and that these reservations range from 382 MW in 2004 to 490 MW in 2006.

31. MGE, WPSC, WEPC, MidAmerican and Alliant contend that PJM's discriminatory annual allocation ensures that they will be exposed to congestion charges that did not exist prior to their integration into PJM. MGE argues that it received as little as 28 percent of its requested FTR capacity reserved pursuant to its firm transmission contracts. MGE states that although it has reserved and is paying for firm capacity, and service was deemed simultaneously feasible by ComEd upon its request, MGE will still be exposed to congestion risk for up to 72 percent of such capacity. In addition, WPSC states that it uses the Bryon Path to deliver long term firm capacity and energy purchases to serve its native load in Wisconsin.¹² WPSC contends that as a consequence of PJM's allocation process, WPSC was awarded only 31.2 percent of the FTRs requested for the annual allocation for the Bryon Path. WPSC asserts that for the annual allocation, ComEd requested and, according to PJM's FTR Report, received 2,392.4 MW of FTRs sourced from Byron – 100 percent of the allocation it requested. Alliant argues that it had 514 MW of firm point-to-point transmission service eligible for the PJM FTR allocation and received 75 percent of requested FTRs. In one instance, Alliant states that it received only 28 MW out of a 100 MW FTR request and in another it received only 28 MW out of a 150 MW request. As a result, these parties complain that the significant pro-rating they experienced will ensure their exposure to new congestion costs.

32. MGE notes that only average aggregate figures are provided by PJM, without support for the allocation calculations. MGE states that the PJM filing does not contain sufficient information for market participants to verify the accuracy of PJM's allocation calculations and analyses or the appropriateness of the pro-rated allocations. MGE does not disagree with PJM regarding the confidentiality of the FTR requests, but references the existence of processes at the Commission under which interested parties could verify that valid FTR requests were submitted and that simultaneous feasibility tests and allocation calculations were properly performed. Further, MGE states that even if one has faith in PJM's claim that it cannot award FTRs of a comparable level and term to holders of firm reservations, PJM has not provided any justification of the reasonableness of the pro-rated allocations.

33. All parties that protest the filing (*i.e.*, MGE, MidAmerican, Alliant, WEPC, WPSC and WPPI) argue that PJM's proposed mitigation measures for customers significantly pro-rated in the June allocation are inadequate. As a result, MGE states that this has led to an effective abrogation of existing firm transmission service contracts, contradicting the requirements of the ComEd Integration order. WPSC, MGE, Alliant and

¹² WPSC notes that the Bryon Path refers to WPSC's wheel from the Byron nuclear power station located on ComEd's system to the Wisconsin Electric/ComEd interface. WPSC also notes that it has historically used this service to deliver firm capacity and energy under a long-term power purchase agreement to service its native load customers' in Wisconsin. See WPSC's Motion To Intervene Out-Of-Time And Protest filed in Docket No. ER04-742-000 on April 27, 2004, page 4.

MidAmerican contend that PJM's suggestion – that WPSC can avoid the consequences of the denial of FTRs by terminating its transmission service on ComEd's system – is disingenuous. WPSC asserts that PJM knows that the Byron Path is used by WPSC to serve its native load in Wisconsin and that the underlying power purchase agreement is long-term. As a consequence, WPSC argues that it would be under the obligation to purchase power that it could not deliver to its load. Additionally, MidAmerican states that PJM offers the option of terminating transmission contracts to those who did not receive simultaneously feasible FTRs in the allocation, and *not* to those who were denied the ability to even apply for FTRs.

34. MGE and WPSC argue that PJM's redirect option is not a complete solution to the significant pro-rating that occurred during the June annual allocation. MGE states that unless a customer can change its existing transmission service so that the re-direct point is the point of receipt for that service, a customer who re-directs the point of receipt for FTR purposes is still subject to risk associated with the difference between the existing point of receipt and re-direct point. WPSC asserts that to take advantage of PJM's alternative path opportunity, WPSC must be willing to sacrifice the FTRs it was allocated on its current path, without knowing whether the new FTRs would be sufficient or even as valuable as what they previously received. However, WPSC states that PJM's proposed rerouting solution might be acceptable subject to certain conditions. WPSC indicates that it should be permitted to retain the FTR MW requested in both the May and June annual allocation in addition to any FTR MW it attains by redirecting. In addition, WPSC also indicates that if congestion revenues did not make up for the congestion costs WPSC is required to pay due to the significant pro-rating it experienced, any short-fall would be recoverable from ComEd under the hold harmless requirement.

35. In summary, all parties that filed protests argue that firm reservations must be treated comparably and the mitigation measures PJM proposes for ComEd customers that were significantly pro-rated fail to sufficiently compensate them.

V. PJM's Answer

36. On May 12, 2004, PJM filed an Answer to the protests. Rule 231(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.12(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's Answer because it has provided information that assisted us in our decision-making process.

37. In its answer, PJM states that if the Commission chooses to continue the additional mitigation measure it ordered for the May 2004 allocation, it should do so for one year, *i.e.*, the June 2004 to May 2005 planning period at issue in this proceeding. PJM asserts that the remedy of treating certain customers as if they had been allocated certain FTRs is an already-completed allocation process, and uplifting the costs to other customers, is an

ad hoc solution. PJM suggests that for future allocations, the better approach is to address the allocation rules. In addition, PJM states that the Commission can facilitate the process by providing guidance in this proceeding on the rules for future allocations.

38. PJM points out that the pro-rating some customers experienced in the June 2004 annual allocation will likely arise again in future allocations. PJM states that its currently approved annual FTR and ARR allocation rules grant network service users a priority over point-to-point customers, with the result that when constraints arise, point-to-point customers can experience greater pro-rating of their requests than network users. PJM suggests that the Commission could endorse the continuation of this rule, as providing the most certain financial protection to native loads served by historic resources. Alternatively, PJM states that the Commission could adopt other allocation procedures.

39. PJM states that it could adopt WPSC's and Alliant's suggestion to give long-term firm point-to-point customer and network service users equal priority in the FTR allocation. PJM explains that if the Commission adopts this approach, firm point-to-point customers will not necessarily receive all of their requested FTRs. Rather, PJM states that where network service paths and firm point-to-point paths affect the same binding constraint, both network and point-to-point FTR requests will be pro-rated, based on the size of the requests and their relative impacts on the constraint. Additionally, PJM notes that the Commission could adopt MGE's recommendation and direct PJM to decrement the resource capability available to native load customers by the amount of any outstanding long-term point-to-point contracts that specify that resource as a receipt point. PJM explains that this would assure long-term point-to-point customers that they would receive FTRs fully corresponding to their contract paths, but it would adversely affect network service users on paths affecting the same binding constraint. Further, PJM asserts that this approach provides the greatest protection to point-to-point customers, but correspondingly presents native loads with the most financial exposure.

40. In addition, PJM argues that it has already shown that its FTR allocation process properly follows principles of the Commission's pro forma tariff, which promote maximum utilization of the system by allowing long-term customers to displace monthly services. PJM observes that in the May Allocation Order, the Commission denied MidAmerican's request for a full allocation of FTRs to its short-term service, at the expense of long-term customers. PJM argues that MidAmerican's argument in this docket does not warrant any different treatment.

VI. Intervenor Response and Answers to PJM's Answer

41. On May 13, 2004, WPSC filed a Response to PJM's Answer and MidAmerican filed a Motion to Reject Answer to Protest, Conditional Motion to File Reply to Answer, and Reply to Answer. On May 18, 2004, MGE filed a Motion for Leave to File Answer and Answer. Rule 231(a)(2) of the Commission's Rules of Practice and Procedure,

18 C.F.R. § 385.12(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept WPSC's, MidAmerican's, and MGE's Response and Answers because they have provided information that assisted us in our decision-making process.

42. WPSC asserts the Commission should make permanent the mitigation measures established in the May Allocation Order¹³ and provide PJM with direction to repair PJM's allocation process. It reminds the Commission that the Commonwealth Edison Company (ComEd) has an obligation to reimburse the Wisconsin utilities for costs that they would not have incurred but for ComEd's decision to join PJM instead of MISO.

43. MGE asserts it is imperative that the Commission extend the May Allocation Order's uplift payments to the pro-rated 2004-2005 FTR allocations in this docket. MGE states it will be exposed to congestion risk for up to 72 percent of its reserved capacity and that the uplift payments are the only way to ensure that it and other Midwest customers are held harmless during this allocation period. MGE asks the Commission to require PJM to keep the May Allocation Order mitigation measure in effect until PJM can prove it is no longer needed to hold harmless Midwest customers, even if that period extends beyond the 2004-2005 allocation period. MGE agrees, however, that in the long term, the solution is to address the allocation rules. It asserts that any revised allocation process should treat long term point-to-point and network integration customers equally. MGE also asserts that any revision to PJM's tariff to address the FTR allocation process should also address other flaws, which, it asserts include the negative impact on "slice of service" customers¹⁴ resulting from PJM's requirement that the capacity source for contracts under which power is being exported from the PJM control area be linked to specific units. Midwest asserts that if the designated unit is not operating due to maintenance or a forced outage, the customer would not receive its service, contrary to its contract.

44. MidAmerican asserts that, contrary to PJM's statements in its Answer, MidAmerican's protest concerning FTRs for short-term firm service was not denied in Docket No. ER04-653-000 and that the Commission should address it in this proceeding. MidAmerican also asserts that in its May, 2004 allocation in Docket No. ER04-653-000, PJM allocated FTRs to customers who held firm service reservations regardless of whether that transmission service was purchased for an annual period or for just one month and that the May Allocation Order approved that equal treatment of long-term and monthly service. MidAmerican also contends that, contrary to PJM's allegations, MidAmerican's approach would not permit a customer purchasing only three months of

¹³ 107 FERC ¶ 61,090 (2004).

¹⁴ Slice of service customers may source energy and capacity from anywhere on ComEd's system.

service each year to preempt a customer willing to buy twelve months of service each year. MidAmerican asserts that its monthly service is subject to bumping and that, to the extent its monthly service remains subject to bumping,¹⁵ any FTRs allocated to MidAmerican would also be subject to bumping if its transmission service were bumped.

VII. Discussion

45. The Commission is accepting PJM's filing for this year, subject to the requirement described below for providing mitigation to customers that did not receive an allocation of FTRs/ARRs in the annual allocation process reasonably consonant with their prior long-term firm contracts for transmission service.¹⁶ However, the Commission also finds that a mitigation approach should not be the long-run solution to FTR/ARR allocation. The Commission, therefore, also is instituting a process under section 206 of the Federal Power Act to determine whether PJM's existing process for allocating FTRs/ARRs is unduly preferential.

46. In the first stage of the annual FTR and ARR allocation process, PJM provided network service users preferential access to capacity and energy resources over customers holding firm point-to-point reservations. As a result PJM pro-rated customers holding firm point-to-point reservations to a greater degree than network service users.

¹⁵ MidAmerican states that much of its 2004 transmission service is no longer subject to bumping.

¹⁶ PJM conducts an annual process of selling and buying FTRs through a multi-round auction. The annual FTR auction offers for sale the entire transmission entitlement that is available on the PJM system on a long-term basis. ARR is the mechanism by which the proceeds from the Annual FTR auction are allocated. At the beginning of each planning period (June 1 of a calendar year to May 31 of a subsequent calendar year), ARRs are allocated to network transmission customers and to firm point-to-point transmission customers for the duration of the planning period. The annual FTR and ARR allocation is conducted in two stages. In the first stage, network service users are allocated ARRs/FTRs based on generation resources that historically served load in each transmission zone or historic load aggregation zone. In the second stage, which includes a four round allocation process, both network service users and firm point-to-point customers are allocated FTRs/ARRs in a comparable manner. Both network service users and firm point-to-point customers are limited to load serving entities' share of zonal peak load.

The current procedures set forth in the PJM Tariff and Operating Agreement are harmful to Wisconsin ratepayers whose service was unduly pro-rated and do not fulfill our previously imposed condition of providing customers holding firm long-term reservations with FTRs for a comparable level and term in the PJM allocation process.¹⁷

47. Because the allocation process provides preference to network service customers, the Commission finds that PJM's annual allocation process for FTRs and ARR under its existing Tariff and Operating Agreement appears to be unjust and unreasonable under section 206 of the Federal Power Act, and the Commission is instituting procedures to determine a just and reasonable allocation process for succeeding years. Within 120 days of this order, PJM is required to file a response to the Commission's concerns that customers holding long-term firm point to point contracts are treated similarly in the FTR and ARR annual allocation process to network customers. After PJM's filing, all parties will be given an opportunity to comment or protest. We urge all market participants to use PJM's stakeholder mechanisms to discuss prospective Tariff and Operating Agreement changes.

48. With respect to the allocation of FTRs/ARRs for the annual period starting June 1, 2004, the Commission will accept the FTR/ARR allocations because they are in accordance with PJM's tariff provisions. However, consistent with our May Allocation order, PJM Interconnection, L.L.C., 107 FERC ¶ 61,090 at P 29 (April 29, 2004), we will require additional mitigation as an interim measure for the June, 2004, through May, 2005 planning period. Consistent with the May Allocation Order, we will require that congestion revenues associated with the FTRs/ARRs that were requested but not received will be paid to the protesting parties that did not receive nominated FTRs/ARRs up to their firm long-term point-to-point contract levels and that such payments will be recovered through an uplift payment assessed to all customers within the ComEd zone.¹⁸ The Commission emphasizes that this mitigation approach is only a short-term solution to the problem, and that the proceeding the Commission has instituted is intended to result in a long-term non-discriminatory solution that does not require mitigation.

49. Additionally, PJM proposes two mitigation measures for customers in the ComEd zone that were significantly pro-rated in the annual allocation process. These are: (1) customers may terminate their existing firm transactions; and (2) customers may re-direct point-to-point service requests. With respect to MidAmerican's concern regarding short-

¹⁷ PJM Interconnection, L.L.C., 106 FERC ¶ 61,253 at P 41 (March 18, 2004) (ComEd Integration Order).

¹⁸ PJM Interconnection, L.L.C., 107 FERC ¶ 61,090 at P 28 (April 29, 2004) (May Allocation Order). See also, PJM Interconnection, L.L.C., 106 FERC ¶ 61,253 at P 41 (March 18, 2004) (ComEd Integration Order).

term firm transactions, the Commission finds that the option to cancel the contract if the customer is dissatisfied with its FTR allocation is sufficient. Unlike customers with long-term point to point contracts, customers with short-term point to point contracts do not have a reasonable expectation that they will be able to retain their capacity and therefore do not have an equal claim to guaranteed FTRs. Furthermore, our review indicates that MidAmerican received some FTR MW in the annual allocation.¹⁹

50. With regard to the redirect option proposal, customers are encouraged to use the redirect proposal to obtain FTRs. But we will not require customers holding firm point-to-point reservations to accept redirect service.

51. Because the FTR and ARR allocation process may be unjust and unreasonable, we are instituting an investigation into this process under section 206 of the FPA and establishing a refund effective date. Pursuant to section 206(b) of the FPA, the Commission must establish a refund effective date that is no earlier than sixty (60) days after the publication of notice of the Commission's intent to institute a proceeding, and no later than five (5) months subsequent to the expiration of the 60-day period. The Commission will establish a refund effective date of 60 days from publication of notice of this investigation. However, the Commission does not see a need for refunds in these circumstances, because, as discussed in this order, it would be disruptive to the market to change the FTRs already allocated for this year, and because the Commission has already provided for mitigation to address the issue for this year. The Commission is also required by section 206 to indicate when it expects to issue a final order. The Commission expects to issue a final order in this section 206 investigation within 180 days of the date this order issues.

The Commission orders:

(A) The proposal filed by PJM is accepted, to become effective June 1, 2004, subject to the condition that PJM implement the mitigation measures for the annual allocation for June 1, 2004 through May 31, 2005, as discussed in the body of this order.

¹⁹ Several customers in Wisconsin point out that if they terminated their long-term transmission transactions, the power purchase contracts associated with the transmission service would remain. As a result, these customers would have an obligation to purchase power that could not be delivered to their loads. However, under the mitigation plan adopted here for one year, the customers with long-term contracts are eligible to receive mitigation and will not have to terminate contracts.

(B) PJM is hereby directed to file its response to the Commission's concerns with its existing FTR allocation procedure within 120 days from the date of the issuance of this order. Parties will be given an opportunity to comment or protest in accordance with the provisions of §35.8(a) of the Commission's regulations (18 C.F.R. §35.8(a)).

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. ER04-742-000 concerning the allocation of ARRs and FTRs, as discussed in the body of this order.

(D) The Secretary is directed to publish a notice of this section 206 proceeding in the Federal Register.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.